



Signed and Filed: December 9, 2019

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
- and -) Chapter 11
PACIFIC GAS AND ELECTRIC COMPANY,) Jointly Administered
Debtors.) Date: December 11, 2019
Time: 10:00 AM
☐ Affects PG&E Corporation) Place: Courtroom 17
☐ Affects Pacific Gas and) 450 Golden Gate Ave.
Electric Company) 16th Floor
☒ Affects both Debtors) San Francisco, CA
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

**ORDER RE TIME ALLOWANCES FOR HEARING AND QUESTIONS FOR COUNSEL
ON ISSUE OF POST-PETITION INTEREST**

On December 11, 2019, at 10:00 AM, the court will conduct a hearing on the proper post-petition interest to apply under the Debtors' proposed Plan of Reorganization (currently the Nov 4, 2019, draft, Dkt. No. 4564). The Debtors, joined by PG&E Shareholders and others aligned with them, will have forty-five minutes, to be shared as their counsel agree, and including time

1 for rebuttal. The Official Committee of Unsecured Creditors,
2 the Ad Hoc Committee of Senior Unsecured Noteholders and others
3 aligned with them will also have forty-five minutes, to be
4 shared as their counsel agree.

5 Counsel should be prepared to address the following to
6 assist the court:

7 Pre-petition unsecured non-priority creditors (excluding
8 Wildfire claimants) are placed into classes 3A, 3B, 4A and 4B.
9 Some claimants assert contractual claims providing for interest
10 ABOVE the applicable federal judgment rate. Some assert
11 contractual claims providing for interest BELOW the applicable
12 federal judgment rate. See, Dkt. No. 4624, at 2:8: 2.45% vs
13 federal judgment rate of 2.59%. Some may assert claims based
14 upon contracts providing NO or some other rate of interest. See,
15 *Id.*, at 2:4-17. Some may assert claims based on pre-petition
16 judgments entitled to post-judgment interest per state law
17 (assume California). And some may assert unliquidated tort
18 claims.

19 What is the proper post-petition, pre-confirmation rate of
20 interest to apply to those four classes? The choices are the
21 contract rates, if there are any, or the federal judgment rate.
22 Debtors' opponents need to tell the court why it should, or even
23 may, reject *Cardelucci's* one-size-fits-all approach of using the
24 same rate for all of the interest claims. This approach avoids
25 the problem the decision warns of, namely figuring out the
26 correct rate to apply unevenly with each class, or even within
27 each class, where equality of treatment appears as one of the
28 bankruptcy code's goals.

1 Those creditors also question the application of 11 U.S.C.
2 § 726(a)(5) at all. But if that section is disregarded, doesn't
3 11 U.S.C. § 502(b)(2) dictate an even less attractive
4 alternative?

5 The issue appears confined principally to the "gap" between
6 the petition date, January 29, 2019, and the effective date of
7 the plan (assume June 30, 2020) *Id* at 1:8-9. Classes 3A, 4A and
8 4B will be paid in full, so post-effective date interest is a
9 non-issue. See, Dkt. No. 4634 at 4:13-14. But Class 3B's
10 treatment will be modified if Debtors' argument fails, so the
11 court will need to determine what rate applies to that class
12 until it is paid in full. Debtors will need to explain how
13 *Cardelucci* extends beyond the gap. If not, what rate does
14 apply?

15 Both sides need to explain why it matters whether a class
16 is IMPAIRED or UNIMPAIRED. *Ultra II* appears to settle the issue
17 in the Fifth Circuit that impairment or unimpairment are
18 concepts driven by 11 U.S.C. § 1124's focus on what the plan
19 does or does not do, not what the bankruptcy code does. *PPI*
20 agrees that 11 U.S.C. § 502(b)(2) is the culprit. There the
21 creditor claiming to be impaired complained about the loss of
22 state law, pre-bankruptcy entitlements, but the court upheld the
23 operation of the bankruptcy code's limitation of those rights,
24 not the debtor's plan. This court finds it hard to imagine that
25 the Ninth Circuit would go the other way and conclude that the
26 plan here is the source of the Debtors' assertion of generally
27 lower post-petition interest entitlements. Equally hard to
28 imagine is that creditors whose contract rates of interest are

1 LOWER than the federal judgment rate would be pleased with an
2 even lower rate. How is that explained?

3 Finally, the creditors pressing for gap contract interest
4 need to explain why there should be any discussion of *fair and*
5 *equitable* under 11 U.S.C. § 1129(b). Under 11 U.S.C. § 1126(f),
6 unimpaired classes are deemed to have accepted the plan. Thus
7 section 1129(b) is not an option for them to invoke.

8 ***END OF ORDER***
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